87-1474

NO:_____

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1987

ROBERT L. BROOKS Petitioner

VS.

STATE OF ALABAMA Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

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34

QUESTIONS PRESENTED FOR REVIEW

Whether a defendant may establish a presumption of prejudice to his Sixth Amendment right to trial by impartial jury through the use of unrebutted expert testimony concerning the results of a public opinion survey?

Whether due process requires an appellate court to conduct a de novo review of a defendant's motion for change of venue and to apply the "reasonable likelihood" standard in determining whether a defendant's Sixth Amendment right to trial by impartial jury has been prejudiced as a result of a lower court's failure to grant a motion for change of venue?

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OPINIONS BELOW

The order of the Supreme Court of Alabama quashing the Writ of Certiorari without opinon was rendered on December 4, 1987. This order, and the prior order of the Supreme Court of Alabama dated March 18, 1987, which issued a Writ of Certiorari to the Court of Criminal Appeals of Alabama, are unpublished and are included in the appendix.

The order of the Court of Criminal Appeals of Alabama which affirmed defendant's conviction without opinion was rendered on October 14, 1986, and the order denying rehearing without opinion was entered on November 12, 1986. Neither of these orders have been published. Both orders are reproduced in the appendix.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment to The Constitution of the United States provides in pertinent part as follows:

> "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed..."

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part as follows:

> "...nor shall any state deprive any person of life liberty or property without due process of law..."

STATEMENT OF JURISDICTION

On December 4, 1987 the Supreme Court of Alabama entered an order without opinion quashing a Writ of Certiorari issued by that court to the Court of Criminal Appeals of Alabama. Petitoner invokes this Court's jurisdiction under the provisions of Title 28, S 1257 (3).

STATEMENT OF THE CASE

On July 30, 1985 at approximately 7:00 P.M., a pickup truck operated by the defendant struck and killed Dr. Michael Tucker as he was bicycling with his wife and two companions on the Bolling Springs Road in Calhoun County, Alabama. (RT. 87,88,169,249) Defendant was subsequently indicted for the murder of Dr. Tucker by the Calhoun County Grand Jury. (CR. 2) On August 21, 1985 the defendant was arraigned and entered a plea of not guilty. (CR. 7) On September 23, 1985 the defendant filed a Motion for Change of Venue, alleging that the deceased was a well known doctor in the county and that pre-trail publicity had prejudiced the community against the defendant such as to deprive him of his rights to due process of law and a trial by an impartial jury. (CR. 20,21)

On October 18, 1985 the court took testimony relative to the merits of defendant's Motion for Change of Venue. (RT. 9-49) At the hearing defendant called as its only witness Dr. William M. Kimmelman, a professor of politics and government with the University of Alabama. The curriculum vitae of Dr. Kimmelman was admitted into evidence without objection. (RT. 9) Dr. Kimmelman testified that he has had fifteen years experience in the field of survey research and that for the seven years preceeding the hearing in this case he has had extensive experience in surveying populations of potential criminal jurors to determine whether prejudice exists against defendants in particular venues. (RT. 10,11) As a consequence of his work in surveying potential criminal jurors, Dr. Kimmelman has been called upon to testify in courts in the State of Alabama on

numerous occasions in cases wherein criminal defendants requested a change of venue based upon juror prejudice. In many of these cases the request for change of venue was granted subsequent to Dr. Kimmelman's testimony. (RT. 10-11)

Dr. Kimmelman testified that he and his assistants conducted a survey of three hundred randomly selected potential jurors in Calhoun County, Alabama (RT. 15) The results of that survey were admitted into evidence without objection. (RT. 15) The survey commenced on September 25, 1985 and was completed on September 30, 1985. (Defendant's Exhibit #2 to Motion For Change of Venue, pp. 3, hereinafter cited as "SURVEY")

Question #6 of the survey asked the following:

> "Now I'd like to turn to an incident that happened in the Ohatchee community of Calhoun County last July. A doctor -- while riding his bicycle with friends -- was killed by a truck. The driver of the truck was arrested and charged with causing the death of the doctor. Do you remember anything at all about this incident?"

In response to this question 89.6% of those surveyed stated they did remember something about the incident made the basis of the indictment against the defendant. The survey questioning was discontinued for those individuals who did not remember the incident. (SURVEY pp. 8)

Question #7 of the survey asked the following:

> "How did you learn about this incident --- through the newspapers, radio, television, friends and acquaintances, and other? (Check all that apply.)"

In response, 68.2% stated that they read about the incident in the newspapers; 39.3% heard about it on the radio; 42.8% saw it on television; 40.8% heard about it through friends and acquaintences; 12.4% learned about it at work; and 2.5% found out about it through other means. The responses totaled more than 100% due to multiple answers. (SURVEY pp. 9)

Question #8 of the survey asked what details the prospective jurors remembered about the incident. The 209 verbatim responses were appended to the survey. (SURVEY pp. 10)

Question #9 of the survey asked the following:

> "Finally, based upon what you have read or heard about it, or have seen, do you feel that the person accused of the crime actually did it" (Do not suggest any answer)."

In response 47.3% stated that the defendant definitely did it; 23.4% felt that he probably did it; 18.9% were not sure; and 10.4% could not recall. (RT. 27,28)

Dr. Kimmelman testified that the survey data indicated that a great number of persons believed that the defendant had previously been arrested and charged with driving under the influence of alcohol, that he had been drinking at the time of the incident and that they were extremely upset about him causing the death of a very popular doctor in the community. (RT. 18) Based upon the results of the survey and the pre-judgments indicated by the responses to question #8 of the survey, Dr. Kimmelman was of the opinion that it would be highly improbable that twelve persons in a jury could

disassociate themselves from the pre-judgments that they had about the defendant. Dr. Kimmelman was further of the opinion that there was actual prejudice directed toward the defendant in Calhoun County. (RT. 28)

Defendant's Motion for Change of Venue was submitted to the court upon the testimony of Dr. Kimmelman and the facts established by the results of the survey. On October 22, 1985 the court entered an order denying defendant's motion.

A jury was struck and trial commenced on October 29, 1985. (RT. 50) On October 31, 1985 the jury found the defendant quilty of a lesser included offense of manslaughter. (CR. 39) Defendant was sentenced to ten years in prison, fined $5,000.00 plus cost, and penalized $10,000.00 on the date judgment was rendered. (RT. 476,477) Defendant gave oral notice of appeal. (RT. 477)

Defendant's appeal to the Alabama Court of Criminal Appeals prayed for a de-novo review of the Sixth and Fourteenth Amendment issues raised in defendant's Motion for Change of Venue. On October 14, 1986 the Court of Criminal Appeals of Alabama affirmed defendant's conviction without opinion. On November 12, 1986 the Court of Criminal appeals of Alabama overruled defendant's application for rehearing without opinion. Subsequently defendant petitioned the Supreme Court to Alabama for a Writ of Certiorari to the Court of Criminal Appeals of Alabama. Defendant asked the court to review the Sixth and Fourteenth Amendment issues raised in his Motion for Change of Venue and to determine whether due process required the Court of Criminal Appeals of Alabama

to conduct a de-novo review of defendant's Motion for Change of Venue. On March 18, 1987 the Supreme Court of Alabama issued a Writ of Certiorari to the Court of Criminal Appeals of Alabama to review this case. On December 4, 1987 the Supreme Court of Alabama entered an order quashing the Writ of Certiorari without opinion.

ARGUMENT FOR GRANTING THE WRIT

The basis for this petition is Supreme Court Rule 17.1 (b) and (c). The issue of whether a defendant may establish a presumption of prejudice to his Sixth Amendment right to trail by a fair and impartial jury through the use of unrebutted expert testimony concerning the results of a public opinion survey is a critical question of federal law and Constitutional interpretation which has yet to be addressed by this court. The question of whether due process requires de novo appellate review of a defendant's claim of prejudice to his Sixth Amendment right to trial by an impartial jury is the subject of great conflict among the states. That question, and the necessarily included question of the standard of review to be applied, appear to be controlled by this Court's decision in Sheppard v. Maxwell, 384 U.S. 333, 16 L.Ed.2d 600, 86 S.Ct. 1507 (1966). Although some state courts recognize the Sheppard decision as controlling these issues others reject it. Even those states which acknowledge the controlling effect of Sheppard do not agree upon the standard of review required by that decision. If Sheppard v. Maxwell controlls these issues then the issues are ones wherein state courts have decided a federal question in a way in conflict with applicable decisions of this Court. If Sheppard v. Maxwell does not controll these issues then the issues are ones wherein state courts have decided important issues of federal law which have not, but should be, settled by this Court.

I. WHETHER A DEFENDANT MAY ESTABLISH A PRESUMPTION OF PREJUDICE TO HIS SIXTH AMENDMENT RIGHT TO TRIAL BY A FAIR AND IMPARTIAL JURY THROUGH THE USE OF UNREBUTTED EXPERT TESTIMONY CONCERNING THE RESULTS OF A PUBLIC OPINION SURVEY

One of the fundamental guarantees provided by the Constitution of the United States is the right of an accused to a fair trial by a panel of impartial jurors. Irvin v. Dowd, 366 U.S. 717, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961) Due Process has been held to mandate a change of venue if a defendant can show that prejudicial pre-trial publicity has so saturated the community as to have a probable impact on the prospective jurors, thus rendering the trial setting inherently suspect. Dobbert v. Florida, 432 U.S. 282, 97 S.Ct. 2290, 53 L.Ed.2d 344 (1977); Rideau v. Louisiana, 373 U.S. 723, 83 S.Ct. 1417, 10 L.Ed.2d 663 (1963) As the 11th Circuit Court of Appeals observed in Coleman v. Kemp, 788 F.2d 1487 (11th Cir. 1985), the presumptive prejudice standard recognized in Rideau is only rarely applicable, and imposes an extremely heavy burden upon the petitioner. Although in a few cases prejudice has been presumed based upon the character of the pretrial publicity, generally proof that pretrial publicity has been disseminated through a particular venue has been held not to give rise to a presumption of prejudice to a defendant's Sixth Amendment right to trial by impartial jury. Rideau v. Louisiana, supra; Coleman v. Kemp, supra; Dobbert v. Florida, supra. What is required is some showing that the effect of the publicity was to create or foster a community prejudice against the moving party,

thus making his trial a "hollow formality". Murphy v. Florida, 421 U.S. 794, 95 S.Ct. 2031, 44 L.Ed.2d 589 (1975) Although in Murphy v. Florida, supra, this Court applied a "totality of the circumstances" test for determining whether pretrial publicity has inflamed community opinion to the level of a presumption of prejudice to a defendant's Sixth Amendment right to trial by an impartial jury, this Court has not heretofore addressed the issue of whether a defendant may establish the existence of deep seated community prejudice against him sufficient to raise the presumption of prejudice to his Sixth Amendment right to trial by an impartial jury solely through the use of expert testimony concerning the results of a public opinion survey.

In the case at bar the petitioner's motion for change of venue was denied prior to voir dire of the jury panel. (CR. 25-28; RT. 15-28) The only witness at the hearing of defendant's motion was Dr. William L. Kimmelman, a professor of politics and government with the University of Alabama. The only documents offered in support of defendant's motion were the curriculum vitae of Dr. Kimmelman and the results of Dr. Kimmelman's survey. (CR. 26; RT. 9,15)

After establishing his expertise on the subject of survey research Dr. Kimmelman testified to the results of a survey of three hundred potential jurors in the Calhoun County, Alabama area. (RT. 15-28) The results of the survey were admitted into evidence without objection. (RT. 15) The survey revealed that 89.6% of the persons surveyed remembered something about the incident made the basis of the criminal charge against the defendant. The survey data further established that of the 89.6% who remembered the incident, only 2.5%

derived the information from some source other than newspaper, radio, television or "word of mouth". Thus the results of the survey reflect a broad and pervasive media coverage of the incident. (SURVEY pp. 9)

Most significantly, the responses to Question #9 of the survey established that 47.3% of those persons who remembered something about the incident believed that the defendant definitely was guilty of the crime. Moreover an additional 23.4% believed that the defendant probably was guilty. (RT. 27,28) Thus the survey reflects that almost 90% of those surveyed knew something of the incident and that more than 70% of that number had a preconceived opinion of the defendant's guilt prior to trial.

Based upon the survey data, Dr. Kimmelman was of the opinion that it was highly improbable that 12 jurors could be found who could disassociate themselves from their prejudgments about the defendant. In Dr. Kimmelman's opinion there was actual prejudice directed toward the defendant in Calhoun County. (RT. 28)

In Main v. Superior Court of Mendocino County, 68 Cal.2d 375, 66 Cal.Rptr 724, 438 P.2d 372 (1968) the California court, in implementing this Court's decision in Sheppard v. Maxwell, 384 U.S. 333, 16 L.Ed.2d 600, 86 S.Ct. 1507 (1966), held that a defendant may establish a presumption of prejudice to his Sixth Amendment right to trial by an impartial jury through methods which include expert testimony concerning the results of public opinion surveys. The rationale of the Maine decision has formed the basis for similar holdings in other states, however to date no state court has determined the question of whether a defendant may establish both the existence of prejudicial publicity and its effect on the

community solely through the use of expert testimony concerning the results of a public opinion survey. Commonwealth v. Stouffer, 307 A.2d 415 (Pa. 1973)

Although this Court has not heretofore sanctioned the use of a public opinion survey as the sole basis for establishing a presumption of prejudice to a defendant's Sixth Amendment right to trial by an impartial jury, it has, in an analogous situation, accepted the use of statistical evidence to establish equal protection violations in the context of jury venire selection. Castaneda v. Partida, 430 U.S. 482, 97 S.Ct. 1272, 51 L.Ed.2d 498 (1977); Turner v. Fouche, 396 U.S. 346, 90 S.Ct. 532, 24 L.Ed. 2d 567 (1970); Whitus v. Georgia, 385 U.S. 545, 87 S.Ct. 643, 17 L.Ed.2d 599 (1967) In this case the survey data amounts to a mathematical demonstration of both the existence of prejudice against the defendant in Calhoun County and the source of the prejudice. The case for recognizing public opinion survey data as a method of establishing a presumption of prejudice to a defendant's Sixth Amendment right to trial by impartial jury is even more compelling than that which supports the use of statistical data to establish Equal Protection claims. In the case of public opinion survey data, the information relates directly to the case in controversy, whereas the statistical data cannot reveal the presence of discrimination against a particular individual. See Castaneda v. Partida, supra.

Petitioner's exclusive reliance upon the results of a public opinion survey to establish both the existence of pretrial publicity and its effect upon the community presents this Court with an opportunity to address the issue of the methods by which a defendant may establish a presumption of prejudice to his Sixth Amendment right to trial by impartial jury. Accordingly

petitioner urges this Court to grant certiorari on this issue and determine this critical question of Constitutional interpretation.

II. WHETHER DUE PROCESS REQUIRES DE NOVO APPELLATE REVIEW OF A DEFENDANT'S CLAIM OF PREJUDICE TO HIS SIXTH AMENDMENT RIGHT TO TRIAL BY AN IMPARTIAL JURY

In Sheppard v. Maxwell, 384 U.S. 333, 16 L.Ed.2d 600, 86 S.Ct. 1507 (1966) this Court held in pertinent part as follows:

> "Due process requires that the accused recieve a trial by an impartial jury free from outside influences. Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused. And appellate tribunals have the duty to make an independent evaluation of the circumstances." (emphasis supplied) Sheppard v. Maxwell, 384 U.S. 333,362

The foregoing language clearly stands for the proposition that due process requires an appropriate appellate court to conduct a de novo review of any claim of prejudice to a defendant's Sixth Amendment right to

trial by impartial jury. Nevertheless state courts which have addressed the question are divided on this issue. In Maine v. Supperior Court of Mendocino County, 68 Cal.2d 375, 66 Cal.Rptr 724, 438 P.2d 372 (1968) the Supreme Court of California held that the decision of this Court in Sheppard requires an appropriate court to conduct a de novo review of claims of prejudice to a defendant's right to a fair trial by an impartial jury. States which have adopted the California court's interpretation of this Court's language in Sheppard include Hawaii, Louisiana, Iowa, and Washington. State v. Moyd, 619 P.2d 1107 (Hawaii App. 1980); State v. Rodrigue, 409 So.2d 556 (La. 1982); State v. Chadwick, 328 N.W.2d 913 (Iowa, 1983); State v. Warwick, 555 P.2d 1386 (Wash App. 1976) However courts of other states have held that, notwithstanding the requirement of "independent review", nothing in Sheppard compells an appellate court to conduct a de novo review of a defendent's claims of prejudice to his Sixth Amendment right to trial by an impartial jury. Brown v. State, 601 P.2d 221 (Alk. 1979); State v. Watson, 114 Ariz. 1, 559 P.2d 121 (1976)

Even among those states which interpret Sheppard to mandate de novo review, there is a conflict concerning the standard of review to apply. In Main v. Superior Court of Mendocino County, supra, the California court, relying upon the language of Sheppard, rejected the use of the "abuse of discretion" standard in the context of a de novo review of a Sixth Amendment claim in favor of the "reasonable likelihood" standard enunciated in Sheppard v. Maxwell, supra. Courts of other states which have adopted the California court's interpretation of the standard of review mandated by Sheppard

include North Dakota, Washington, and Pennsylvania. Olson v. North Dakota District Court, 271 N.W.2d 574 (N.D. 1978); State v. Warwick, supra; Commonwealth v. Palmer, 310 A.2d 360 (Pa. 1973). However courts of other states, while acknowledging that Sheppard mandates a de novo review, have retained the "abuse of discretion" standard for determining the issue. State v. Rodrigue, supra. Yet another approach is that of Alabama, the state wherein the case at bar originated. There the court acknowledges the requirement of de novo review but applies the "reasonable likelihood" and "abuse of discretion" standards alternately and in a seemingly interchangeable manner. Compare Langham v. State, 494 So.2d 910 (Ala.Cr.App. 1986); Ex Parte Grayson, 479 So.2d 76 (Ala. 1985); Arthur v. State, 472 2d 650 (Ala.Cr.App. 1984); Wilson v. State, 480 So.2d 78 (Ala.Cr.App. 1985)

In his initial appeal of the case at bar, petitioner requested the Court of Criminal Appeals of Alabama to conduct a de novo review of the evidence presented to the trial court in support of his motion for change of venue, and upon said review to hold that petitioner had met his burden of proof at the trial level. Upon the failure by the Alabama Court of Criminal Appeals to conduct a de novo review of petitioner's Sixth Amendment claim, and upon that court's failure to grant rehearing in order to conduct said de novo review, petitioner herein petitioned the Supreme Court of Alabama for a writ of certiorari to review the record in this case. Petitioner requested the Supreme Court of Alabama to hold that the failure of the Court of Criminal Appeals to conduct a de novo review of petitioner's Sixth Amendment claims operated to deprive the petitioner of due process of law as guaranteed by the Constitution of the United States by depriving him of a meaningful review of his Sixth

Amendment claims. Clearly the order of the Alabama Court of Criminal Appeals which affirmed petitioner's conviction without opinion cannot be considered an independent review of petitioner's claim of prejudice to his Sixth Amendment rights as required by Sheppard v. Maxwell, supra.

Considering the total lack of independent review of petitioner's claims of prejudice to his Sixth Amendment rights, this case provides an ideal factual framework from which this Court may address the issues raised by the "independent review" requirement heretofore enunciated in Sheppard v. Maxwell, supra. In view of the great conflict among the states concerning whether this Court's decision in Sheppard v. Maxwell, supra, mandates a de novo review of claims of prejudice to Sixth Amendment rights, and further in view of the conflict among the states concerning the necessarily included question of whether appellate courts may utilize the "abuse of discretion" standard in determining Sixth Amendment claims on de novo review, petitioner urges this court to grant certiorari in this case and resolve these critical issues of Constitutional interpretation.

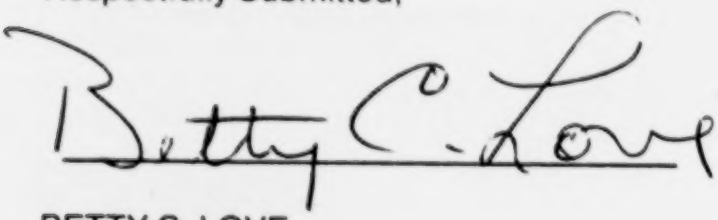
CONCLUSION

As has been heretofore demonstrated, the question of whether, solely through the use of expert testimony concerning the results of a public opinion poll, a defendant may establish a presumption of prejudice to his Sixth Amendment right to trial by impartial jury has not been heretofore addressed by this court. State courts have approved the use of public opinion surveys in the context of change of venue motions and, in analogous situations, this Court has sanctioned the use of statistical evidence to establish Equal Protection claims. In view of petitioner's exclusive reliance upon expert testimony concerning the results of a public opinion survey to establish that pretrial publicity had prejudiced the community such as to give rise to a presumption of prejudice to his Sixth Amendment right to trial by impartial jury, this case provides an ideal vehicle from which to resolve this heretofore unresolved question of Constitutional interpretation.

That portion of this Court's ruling in Sheppard v. Maxwell which mandates independent review of a defendant's claims of prejudice to his Sixth Amendment right to trial by impartial jury has created conflict among the states concerning both the manner of review and the standard of review to be applied. In view of the fact that the appellate court affirmed defendant's conviction without opinion, notwithstanding defendant's request for de novo review of his Sixth Amendment claims, this case presents an unequalled opportunity to reaffirm the principles of Due Process heretofore enunciated in Sheppard and to clarify both the manner and standard of review required by Due Process.

For the foregoing reasons petitioner respectfully requests this Court to issue a writ of certiorari to the Court of Criminal Appeals of Alabama in order to review the Constitutional questions raised herein.

Respectfully Submitted,



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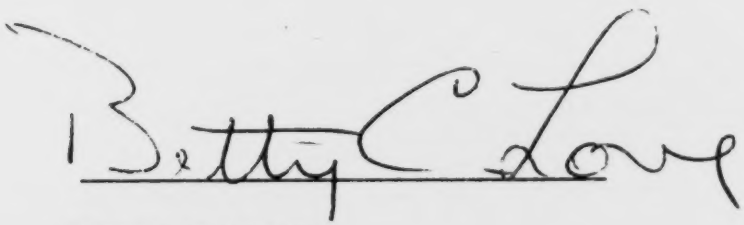
CERTIFICATE OF SERVICE

I hereby certify that I have mailed three copies of the foregoing corrected petition to counsel of record by placing same in the United States mail, first class postage prepaid, properly addressed, on this the 3rd day of March, 1988. I further certify that all parties required to be served have been served.



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APPENDIX

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA

ROBERT LOUIS BROOKS	*	Circuit Court of
APPELLANT	*	Calhoun County,
	*	Alabama
VS.	*	
	*	
STATE OF ALABAMA	*	CC 85-880
	*	7th Div. 556
APPELLEE	*	
	*	

You are hereby notified that on October 14, 1986 the following indicated action was taken in the above-styled cause by the Court of Criminal Appeals of Alabama:

____ Notice of Appeal filed. Future correspondence should refer to the above number.

____ Record on Appeal filed. Date of Certificate of Completion of Record on Appeal: _____.
As to briefs, see Rules 28, 31 and 32, A.R.A.P.

____ On motion, record on appeal accepted and considered as timely filed in this Court.

____ Appellant granted seven (7) additional days to file brief. Brief due on _____.

____ Appellee granted seven (7) additional days to file brief. Brief due on _____.

____ Appellant granted seven (7) additional days to file **reply** brief. Brief due on _____.

____ Brief of Appellant filed. ____Oral argument requested by appellant.

____ Reply brief filed.

____ Oral argument request disallowed:appeal submitted on briefs.

____ Appeal submitted to the Court for decision in the following manner:

XX **Affirmed** on appeal. **No opinion.** Judgment not final, see Rules 40 and 41,A.R.A.P.

____ Appeal **dismissed. No Opinion.**

____ Application for rehearing and Rule 39(k), A.R.A.P., motion filed.

____ Application for rehearing filed.

____ Application for rehearing **overruled. No opinion.** Judgment not final, see Rules 39 and 41, A.R.A.P.

____ Application for rehearing **overruled.** Rule 39(k), A.R.A.P., motion **denied. No opinion.**
Judgment not final, see Rules 39 and 41, A.R.A.P.

____ Application for rehearing returned for non-compliance with Rule 40, A.R.A.P.

____ Appeal placed on reharing **ex mero motu.**

____ Certificate of final judgment issued to circuit clerk.

Wallie Jordan

CLERK
COURT OF CRIMINAL APPEALS
OF ALABAMA

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA

ROBERT LOUIS BROOKS APPELLANT VS. STATE OF ALABAMA APPELLEE	*******	Circuit Court of Calhoun County, Alabama CC 85-880 7th Div. 556

You are hereby notified that on November 12, 1986 the following indicated action was taken in the above-styled cause by the Court of Criminal Appeals of Alabama:

____ Notice of Appeal filed. Future correspondence should refer to the above number.

____ Record on Appeal filed. Date of Certificate of Completion of Record on Appeal: _____.
As to briefs, see Rules 28, 31 and 32, A.R.A.P.

____ On motion, record on appeal accepted and considered as timely filed in this Court.

____ Appellant granted seven (7) additional days to file brief. Brief due on _____.

____ Appellee granted seven (7) additional days to file brief. Brief due on _____.

____ Appellant granted seven (7) additional days to file **reply** brief. Brief due on _____.

____ Brief of Appellant filed. ____Oral argument requested by appellant.

____ Reply brief filed.

____ Oral argument request disallowed:appeal submitted on briefs.

____ Appeal submitted to the Court for decision in the following manner:

____ **Affirmed** on appeal. **No opinion**. Judgment not final, see Rules 40 and 41,A.R.A.P.

____ Appeal **dismissed. No Opinion.**

____ Application for rehearing and Rule 39(k), A.R.A.P., motion filed.

____ Application for rehearing filed. .

____ Application for rehearing **overruled. No opinion.** Judgment not final, see Rules 39 and 41, A.R.A.P.

XX Application for rehearing **overruled.** Rule 39(k), A.R.A.P., motion **denied. No opinion.**
Judgment not final, see Rules 39 and 41, A.R.A.P.

____ Application for rehearing returned for non-compliance with Rule 40, A.R.A.P.

____ Appeal placed on reharing **ex mero motu.**

____ Certificate of final judgment issued to circuit clerk.

Wallie Jordan

CLERK
COURT OF CRIMINAL APPEALS
OF ALABAMA

IN THE SUPREME COURT OF ALABAMA

ROBERT L. BROOKS	
APPELLANT	COURT OF
VS.	CRIMINAL APPEALS
STATE OF ALABAMA	86-298
APPELLEE	

EX PARTE: ROBERT L. BROOKS
PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS

You are hereby notified that the following indicated action was taken in the above cause by the Supreme Court today:

____ Appeal docketed. Future correspondence should refer to the above number.

____ Court Reporter granted additional time to file reporter's transcript to and including

____ Clerk/Register granted additional time to file clerk's record/ record on appeal to and including

____ Appell_____granted 7 additional days to file briefs to and including

____ Appellant(s) granted 7 additional days to file reply briefs to and including

____ Record on Appeal filed

____ Appendix Filed

____ Submitted on Briefs

____ Petition for Writ of Certiorari denied. No opinion.

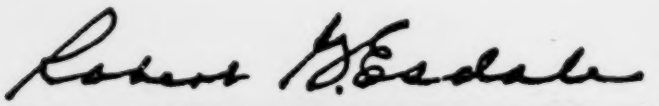
____ Application for rehearing overruled. No opinion written on rehearing.

____ Permission to file amicus curae briefs granted

XX Petition for Writ of Certiorari to the Court of Criminal Appeals granted.
PER CURIAM
TORBERT, CJ., MADDOX, ALMON, BEATTY AND HOUSTON, JJ., CONCUR.

Oral argument has been granted in this cause. Attorneys should consult Rule 39 (f), ARAP, regarding the filing of additional briefs.

PLEASE PUT ABOVE NUMBER ON ALL MATERIAL FILED IN THIS CASE.



Robert G. Esdale, Clerk
Supreme Court of Alabama

3/18/87

IN THE SUPREME COURT OF ALABAMA

ROBERT L. BROOKS	
APPELLANT	COURT OF
VS.	CRIMINAL APPEALS
STATE OF ALABAMA	86-298
APPELLEE	

EX PARTE: ROBERT L. BROOKS
PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS

You are hereby notified that the following indicated action was taken in the above cause by the Supreme Court today:

____ Appeal docketed. Future correspondence should refer to the above number.

____ Court Reporter granted additional time to file reporter's transcript to and including

____ Clerk/Register granted additional time to file clerk's record/ record on appeal to and including

____ Appell_____granted 7 additional days to file briefs to and including

____ Appellant(s) granted 7 additional days to file reply briefs to and including

____ Record on Appeal filed

____ Appendix Filed

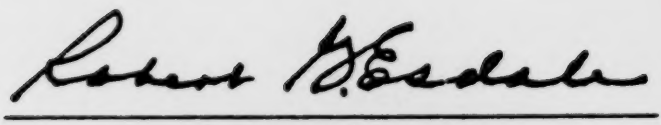
____ Submitted on Briefs

____ Petition for Writ of Certiorari denied. No opinion.

____ Application for rehearing overruled. No opinion written on rehearing.

____ Permission to file amicus curae briefs granted

XX Writ Quashed as Improvidently Granted. No Opinion. PER CURIAM - MADDOX, JONES, ALMON, SHORES, BEATTY, ADAMS, HOUSTON AND STEAGALL, JJ., CONCUR.



Robert G. Esdale, Clerk
Supreme Court of Alabama

12/4/87